

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the
Operations and Practices of Verizon (formerly
GTE California Incorporated) with respect to its
Individual Case Basis Contracts.

Investigation 02-04-027
(Filed April 22, 2002)

ORDER EXTENDING STATUTORY DEADLINE

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within twelve months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. In this proceeding, the twelve-month deadline for resolving this matter is April 22, 2003. The Commission's Consumer Protection and Safety Division (CPSD) has filed a motion to either: (a) extend the deadline; or (b) dismiss the proceeding without prejudice while at the same time ordering respondent Verizon to underwrite the cost of consultants outside the context of a proceeding and leaving it to CPSD's discretion whether or not another Order Instituting Investigation should be filed after the investigation is complete. Verizon recommends that the Commission deny CPSD's motion.

Order Instituting Investigation 02-04-027 ordered CPSD (then Consumer Services Division) to hire outside consultants to conduct a review of the matters at issue in this proceeding, and Verizon to reimburse the Commission for the consultants' costs. CPSD explains that the requirements for a state agency contracting with outside entities are complicated and time-consuming. That, taken together with the tight deadlines imposed by the proceeding schedule set

following the first prehearing conference, led it to approach the California Department of Finance (DOF) to conduct the audit rather than an outside consultant. DOF initially indicated it could provide the needed services by the October deadline to meet the schedule, whereupon CPSD completed the internal contracting procedures, finalized the contract, and sent it to DOF for execution. CPSD, believing that DOF would be conducting the audit, thereupon transferred the documents in its possession to DOF. Verizon was in the process of doing the same when DOF told CPSD that it had not signed the contract and would not do so because the project was impossible to complete in time to meet the Section 1701.2(d) twelve-month deadline for completing the proceeding. Meanwhile, Verizon's attorneys were meeting with resistance from its former consultant, Arthur Andersen LLP, to providing the workpapers from its earlier audit into the same matters at issue here, thus further delaying the proceeding.

A second prehearing conference was held on November 15, 2002 at which assigned Administrative Law Judge (ALJ) McVicar directed CPSD to prepare and file a proposed revised proceeding schedule. In mid-December 2002, CPSD filed that schedule, estimating that it would require at least three more years to complete the proceeding, whereupon ALJ McVicar issued a ruling directing Verizon and CPSD to enter into discussions to explore prospects for achieving a settlement. On March 21, 2003, the parties reported back in a joint filing that no settlement had yet been reached, but the prospects for settlement were good.

Verizon opposes both of CPSD's alternative requests, charging CPSD with having failed to regularly pursue its investigation from 1999 when the Commission first addressed this matter, through the present. Any extension, it believes, would deprive it of its right under Section 1701.2(d) to a timely resolution within the twelve-month deadline. If the Commission were to grant

an extension, however, Verizon suggests it be limited to three months. It also opposes CPSD's alternative request to dismiss the proceeding without prejudice while ordering Verizon to fund further audits. That, Verizon argues, would essentially grant CPSD an unlimited mandate to conduct an open-ended investigation at Verizon's expense without the procedural protections Verizon is due under the Commission's formal investigatory process.

We will grant the extension CPSD requests. The difficulties CPSD has encountered are undoubtedly real; it was, in fact, anticipated and discussed at the first prehearing conference that meeting the Section 1701.2(d) deadline might not be possible. At the same time, we are mindful of Verizon's concern and place CPSD on notice that it is to assign a high priority to pursuing its investigation to a timely conclusion. To ensure that happens, we will periodically hold additional prehearing conferences at which CPSD will be expected to report its progress to the ALJ and Assigned Commissioner.

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment on draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and James McVicar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This proceeding was initiated on April 22, 2002.
2. Based upon the twelve-month statutory deadline, this proceeding must be resolved on or before April 22, 2003, unless the date is extended.

3. For the reasons set forth in CPSD's motion and summarized in the body of this decision, this proceeding cannot be resolved before the twelve-month statutory deadline runs.

4. Public review and comment regarding this decision should be waived.

Conclusion of Law

The twelve-month statutory deadline imposed by Pub. Util. Code 1701.2(d) should be extended, effective immediately, until further order.

O R D E R

IT IS ORDERED that the twelve-month statutory deadline in this proceeding is extended until further order.

This order is effective today.

Dated _____, at San Francisco, California.